

FILED

IN THE UNITED STATES DISTRICT COURT IN AND FOR APR 30 1976

THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

In Re HOME-STAKE PRODUCTION COMPANY)	M.D.L. # 153	
SECURITIES LITIGATION)		
) 73-C-58		74-C-208
) 73-C-175		74-C-224
) 73-C-227		74-C-225
) 73-C-304		74-C-226
) 73-C-344		74-C-227
) 73-C-377		74-C-228
) 73-C-382		74-C-229
) 73-C-409		74-C-230
) 74-C-151		74-C-231
) 74-C-176		74-C-232
) 74-C-178		74-C-244
) 74-C-179		75-C-430
) 74-C-180		75-C-431
) 74-C-181		75-C-432

PRE-TRIAL ORDER NO. 6

1. The motion by certain plaintiffs in the Anderson cases to discontinue their actions and the motion by Mr. Plowden-Wardlaw to intervene as a plaintiff in several of those actions was granted as modified and an order signed.

2. The motion of Robert S. Trippet, plaintiff in Civil Action No. 73-C-304, to strike the motion of the Trustee and other defendants to dismiss the complaint therein is denied, the motion of the Trustee and the defendants Robinson, McKellep, Cottrill and Thomason, is hereby granted, and the complaint is dismissed with prejudice.

3. The motion to compel answers to first wave interrogatories of Harry Heller and Simpson Thacher & Bartlett is sustained. All plaintiffs with the exception of the plaintiffs in the Leachman cases (Civil Nos. 74-C-176, 74-C-176, 74-C-176, 74-C-208, and 74-C-232) and in the Anixter cases (Civil Nos. 73-C-377, 73-C-382 (consolidated) and 74-C-244) are required by May 24, 1976, either

to file motions to dismiss their actions or to answer all first wave interrogatories which have been propounded by the defendants. In the event of extraordinary circumstances or undue hardship, leave is given to apply for a further extension of time for good cause shown with respect to a limited number of individuals. Failure to timely dismiss actions or answer first wave interrogatories may result in dismissal by the Court of those actions brought by those plaintiffs in default.

4. Defendants Trippet, Kunkel, Fitzgerald, Sims, Cross, Klineman, Ganong and Greer shall not be subject to further discovery in this litigation effective April 8, 1976, until (as to each such individual) the trial of the criminal case, No. 76-CR-23, is concluded.

5. No party to this litigation shall henceforth propound interrogatories consisting of more than twenty (20) separately stated and numbered questions, inclusive of subparagraphs, except on special application to the Court for just cause.

6. Plaintiffs' motion to stay all non-class-action discovery is denied.

7. Defendants Landrith, Lenoir and Smith shall answer first wave interrogatories by May 24, 1976.

8. A document depository is to be established by April 22, 1976. Counsel are to establish a committee of five counsel consisting of Messrs. Langenkamp, Mortensen, Owens, Stockwell and Wineberg, who shall prepare a proposed form of order governing the administration thereof. All parties in the litigation shall be required to deposit all of their documents promptly. All discoverable documents presently in the possession of counsel shall be deposited by May 10, 1976. All discoverable documents

shall be assembled as promptly as possible by counsel and shall be deposited by June 8, 1976. In the event of extraordinary circumstances or undue hardship, leave is given to apply for a further extension of time for good cause shown with respect to a limited number of individuals.

9. The Anixter plaintiffs shall file a withdrawal of jury demand as to Civil Nos. 73-C-377, 73-C-382 and 74-C-244.

10. The motion of defendant McAfee, Taft to require amendments of the class action complaints is denied.

11. Defendants' motion to amend class action opinion to provide for Section 1292(b) certification is denied.

12. All motions for leave to intervene as additional representative plaintiffs in the class actions, other than motions by charitable donees, shall be filed by April 14, 1976. Oppositions to such motions shall be filed by May 3, 1976, and any replies shall be filed by May 10, 1976.

13. All motions to intervene in the class actions by entities purporting to represent charitable donees shall be filed by April 22, 1976. All oppositions to such motions shall be filed by May 11, 1976 and replies to such oppositions by May 18, 1976.

14. All defendants, with the exception of the defendants in the criminal case referred to in Paragraph 4 herein, shall file answers to the complaints in the class action cases thirty (30) days after the entry of the Court's order ruling on the motions for intervention.

15. (a) The following counsel are hereby designated as the Committee of Counsel for the Class Action cases: R. Dobie Langenkamp of Doerner, Stuart, Saunders, Daniel & Langenkamp; William A. Wineberg, Jr. of Broad, Khourie & Schulz; Harold F. McGuire, Jr. of Gilbert, Segall and Young; and Peter Van N.

Lockwood of Caplin & Drysdale.

(b) The following counsel are appointed as Liaison Counsel herein for plaintiffs:

On all class action issues: William A. Wineberg, Jr. of Broad, Khourie & Schulz, One California Street, San Francisco, California 94111.

On all other issues: R. Dobie Langenkamp of Doerner, Stuart, Saunders, Daniel & Langenkamp, 1200 Atlas Life Building, Tulsa, Oklahoma 74103.

Messrs. Wineberg, Langenkamp, McGuire and Lockwood shall be included on all mailing lists and meetings of Liaison Counsel.

(c) Plaintiffs' Liaison Counsel shall:

(1) Receive and transmit to plaintiffs' attorneys of record all papers served upon plaintiffs' Liaison Counsel by the Court;

(2) Serve and file all papers presented on behalf of plaintiffs jointly upon plaintiffs' and defendants' attorneys of record;

(3) Maintain complete files, with copies of all documents served by or upon them, and make such files available to any plaintiffs' attorneys on request.

(d) Plaintiffs' Committee of Counsel on the Class Action shall:

(1) Call and preside over conferences of plaintiffs' counsel for the purpose, among others, of reaching agreement on joint action;

(2) Coordinate the activities of plaintiffs' attorneys to avoid unnecessary duplication of time and effort; and

(3) Act as spokesman for plaintiffs at all future

pre-trial conferences and (unless they designate another attorney) at all other hearings.

(e) In case of disagreement among plaintiffs' attorneys, plaintiffs' Committee of Counsel shall consider the views expressed by the majority of plaintiffs' attorneys, but shall take such action as they believe to be in the best interest of the plaintiffs as a group if the members of the Committee are unanimously in agreement. If there is no such unanimous agreement or if other plaintiffs' counsel disagree, they may bring such disagreement to the Court for resolution and appropriate instructions. Defendants' counsel may rely on all agreements reached with plaintiffs' Committee of Counsel or plaintiffs' Liaison Counsel, and all such agreements shall be binding on all of plaintiffs' counsel unless otherwise ordered by the Court.

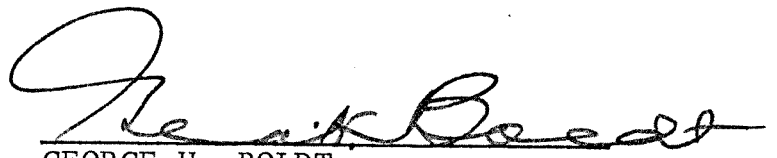
16. In the case of Helmer v. First National Bank of Tulsa, Civil Action No. 75-C-430, the defendant shall serve and file by May 3, 1976, all motions based on Subsections 1-5 of Rule 12(b), Federal Rules of Civil Procedure, and all motions based on Subsections 6 and 7 of Rule 12(b) of which it is now aware, together with its requests for discovery in connection with the class action motion. Plaintiffs shall file on or before May 3, 1976, their motion for certification of the case as a class action together with their requests for discovery. Responses to the above two motions shall be filed by June 1, 1976, and replies shall be filed by June 21, 1976.

17. With respect to Luce v. Arthur Anderson & Co., 75-C-431, and Robertson v. McKee, Atkins & Schuler, 75-C-432, the defendants shall file by May 7, 1976 their responses to the pending motions to certify class action and for consolidation and their replies

to plaintiffs' memoranda in response to defendants' motions to dismiss. Plaintiffs shall have until May 27, 1976 to reply to defendants' response with respect to class action certification.

18. The next pre-trial conference shall be held on ~~the~~ day of June 24-25, 1976, in Tulsa, Oklahoma. Thereafter, pre-trial conferences shall be held every four months. All papers on all matters to be considered at each pre-trial conference must be in the Court's hands fifteen (15) days before such pre-trial conference. The Court shall consider only those matters on which it has received papers fifteen (15) days before the pre-trial conference from all parties interested in such matters, except for good cause shown. Briefing schedules shall be established so as to afford adequate time to all interested parties to prepare and file responses before expiration of the fifteen (15)-day deadline established in this paragraph.

Given under my hand this ²²27 day of April, 1976.


GEORGE H. BOLDT
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

APR 30 1976

JACKY RAY HARPER, by and through
her next friend, Rosetta Mae
Harper,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
PRUDENTIAL LIFE INSURANCE COMPANY,
and THELMA T. HUNDLEY,

Defendants.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO.

76-C-80-B

STIPULATION FOR DISMISSAL OF DEFENDANT
UNITED STATES OF AMERICA

COME NOW the parties through their attorneys and pursuant
to Rule 41, F.R.C.P. stipulate that the plaintiff's cause
herein may be and is dismissed as to defendant, the United
States of America.

DATED this 30th day of April, 1976.

JACKY RAY HARPER

By Benjamin P. Abney *by fb*
Benjamin P. Abney
Chapel, Wilkinson, Riggs & Abney
1640 South Boston
Tulsa, Oklahoma 74119
Telephone: (918) 587-3161

Defendants:

UNITED STATES OF AMERICA

By Robert P. Santee
Robert P. Santee
Assistant United States Attorney

PRUDENTIAL LIFE INSURANCE COMPANY

By Sidney G. Dunagan
Sidney G. Dunagan
Gable, Gotwals, Rubin, Fox,
Johnson & Baker
2010 Fourth National Bank Building
Tulsa, Oklahoma 74119

HCK:am
4/28/76

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LARKIN BAILEY,)
)
Plaintiff,)
)
vs.)
)
TIMBERLAKE, INC.,)
an Oklahoma corporation;)
HEIDLER CORPORATION, a)
Delaware corporation;)
JAMES W. HEIDLER; ATLAS)
LIFE INSURANCE CO., an)
Oklahoma corporation;)
WARREN L. ALBERTY; MARGUERETTE J.)
ALBERTY; CHARLES ANDREW VANCE)
and PHYLLIS N. VANCE,)
)
Defendants.)

No. 72-C-19-C

FILED
IN OPEN COURT
APR 29 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER CONFIRMING SALE

This matter having come on regularly before the Court on the application of Larkin Bailey, plaintiff, for confirmation of the sale of real property made by Loyal Roach, the Special Master appointed by this Court for such purpose, on the 6th day of April, 1976, under the order of sale issued by this Court on February 24, 1976, and it appearing to the Court on examining the return of said sale by the said Loyal Roach, Special Master, and of the proceedings of said Special Master in such matter, and it appearing that such sale and all proceedings connected therewith were in all respects in due form;

And it further appearing that on November 11, 1975, judgment was rendered in this case in favor of the then plaintiff Robert J. Caraway, against the defendant, Timberlake, Inc. and Heidler Corporation, in the amount of \$310,062.50 plus interest from and after September 1, 1975, at the rate of \$62.50 per day and together with attorneys' fees in the amount of \$6,300.00 together with costs of \$20.00 which judgment was assigned by said Robert J. Caraway to Larkin Bailey who by order of this court dated February 17, 1976 was substituted as plaintiff in this cause, and it further appearing that there remains unpaid

LAW OFFICES
UNGERMAN,
GRABEL &
UNGERMAN
SIXTH FLOOR
WRIGHT BUILDING
TULSA, OKLAHOMA

on said judgment the amount of \$309,528.64 plus interest accruing subsequent to February 17, 1976, after crediting the distribution and payment of \$17,416.36 made to said judgment creditor on February 17, 1976 pursuant to this Court's order of distribution of the proceeds from the sale of other lands involved in this litigation than the particular lands which are the subject of this order of confirmation. The court further finds that the balance due on such judgment is a first and prior lien on the following described lands situated in Cherokee County, State of Oklahoma, to-wit:

The South 19.54 acres of Lot 4,
Section 18, Township 19 North,
Range 21 East,

which were the lands sold by said Loyal Roach pursuant to this court's order of February 24, 1976.

And it further appearing that all that title and interest of the defendants, Timberlake, Inc. and Heidler Corporation, in and to such property was sold by said Loyal Roach, Special Master, to Larkin Bailey, plaintiff herein, for the sum of \$10,000.00, such sum being just and reasonable and the highest bid offered for such property at such sale.

And it further appearing that more than 20 days have elapsed since the return of said Loyal Roach, Special Master, to the order of sale, duly filed herein on April 7, 1976, and no objections or exceptions having been made or filed to such return and due notice of this hearing has been given to all counsel of record in this cause.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the sale be and the same hereby is in all respects confirmed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said Loyal Roach, Special Master, shall execute and deliver to the purchaser a deed in fee simple for such property; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the purchaser shall not be required to pay to the said Special Master any part of the purchase price but that the said purchase

price shall be credited on the balance due under the aforesaid judgment; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Loyal Roach, the Special Master, on delivery of the deed to the property as herein provided shall be discharged from further duties or obligations in this cause.

DATED this 29th day of April, 1976.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

W. J. USERY, JR., Secretary of Labor,)
United States Department of Labor,)
Plaintiff,) Civil Action File
v.) No. 75-C-407-C
OKLAHOMA ACOUSTICAL AND SPECIALTIES,)
INC., a corporation, and GLENN E.)
McKINNEY, an individual,)
Defendants.)

FILED

APR 29 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

Plaintiff has filed his complaint against Oklahoma Acoustical and Specialties, Inc. and Glenn E. McKinney. Thereafter, Plaintiff and Defendants announced that they had reached an agreement in this matter, and it appearing to the Court that Plaintiff and Defendants are in agreement and that this judgment should be entered, it is therefore,

ORDERED, ADJUDGED and DECREED that Defendants, their officers, agents, servants, employees and those persons in active concert or participation with them are permanently enjoined and restrained from violating the provisions of section 7 or 11(c) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.), hereinafter referred to as the Act, in any of the following manners:

I

Defendants shall not, contrary to the provisions of section 7 of the Act, employ any employee engaged in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than 40 hours unless Defendants compensate

such employee for employment in excess of 40 hours in a workweek at a rate not less than one and one-half times the regular rate at which such employee is employed.

II

Defendants shall not, contrary to the provisions of section 11(c) of the Act, fail to make, keep and preserve the records required by the Code of Federal Regulations, Title 29, Part 516.

III

It is further ORDERED, that Defendants be enjoined and restrained from withholding payment of overtime compensation and minimum wages in the total amount of \$13,250.00, which the Court finds to be due under the Act to Defendants' employees, named in the attachment "A" hereto, which by reference is made a part hereof. The exact amount to be distributed to each employee will be determined by the Employment Standards Administration of the Department of Labor. The provisions of this order shall be deemed satisfied when Defendants deliver to Plaintiff a cashier or certified check, payable to "Employment Standards Administration-Labor", in the amount of \$13,250.00; the said check must be delivered to plaintiff within thirty days after the entry of this judgment.

IV

It is further ORDERED, that Plaintiff, upon receipt of such certified or cashier's check from Defendants, shall promptly proceed to make distribution, less income tax and social security withholdings, to Defendants' employees named herein, or to the legal representative of any deceased person so named. If, after


making reasonable and diligent efforts to distribute such amounts to the person entitled thereto, Plaintiff is unable to do so because of inability to locate a proper person, or because of a refusal to accept payment by any such person, Plaintiff, pursuant to 28 USC section 2041, shall deposit such funds with the Clerk of this Court. Any such funds may be withdrawn for payment to a person entitled thereto upon order of this Court.

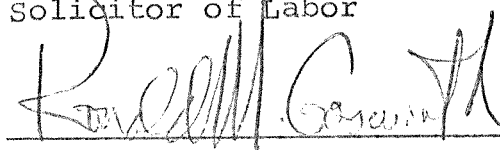
It is further ORDERED, that Defendants will pay the costs of this action.

DATED this 29th day of April, 1976.



UNITED STATES DISTRICT JUDGE

Entry of this order is consented and agreed to:



WILLIAM J. KILBERG
Solicitor of Labor


RONALD M. GASWIRTH
Regional Solicitor


WILLIAM E. EVERHEART
Acting Counsel for ESA


ROBERT F. MARIS
Attorney

Attorneys for Plaintiff


R. CASEY COOPER
Attorney for Defendants
Oklahoma Acoustical and Specialties,
Inc. and Glenn E. McKinney

ATTACHMENT "A"

Arnold Bowman	Mary A. McKay
Vann R. Brown	Eugene M. Zueen
Edward L. Clifton	Albert Elroy Morris
Melvin G. Coday	Richard Neugin
Arthur Compton	Don A. Roach
Glen Coonrod	Gary W. Roach
Larry Coonrod	Kim A. Roach
Clyde E. Cooper	Richard Roach
Julius Cooper, Jr.	Allan Dale Rogers
Tandy Cooper	Dewey Rogers
Henry Corser	Larry Rogers
Kathi Crawford	Clayton Rohlfs
Jack Day	Frankie Lee Ross
James E. Dodd	Larry Rush
Ralph Dotson	Dewey Rutherford
Ray D. Grimshaw	David G. Smith
Billie Joe Hickman	Floyd D. Stidman
Michael Holman	Herman D. Sumner
Bill Knott	Evelyn Vaughn
John Knott	Gene Webster
Jacob Layton	Odis Webster
Charlene Marshall	Julian F. Whitely

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

VINCENT R. JACKSON,
Administrator of the Estate of
Ruth K. Jackson, Deceased,

Plaintiff,

-vs-

LLOYD A. HOLLINGSWORTH,
Administrator of the Estate of
Frances J. Hollingsworth, Deceased.

Defendant.

APR 29 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NO. 75-C-165-*C* ✓

APPLICATION FOR DISMISSAL

Comes now the plaintiff and the defendant and show to the Court that all of the issues between the parties hereto have been compromised and settled; that the defendant herein has agreed to pay the sum of Twelve Thousand Five Hundred and No/100 Dollars (\$12,500.00) any and all rights and causes of actions that the plaintiff has of the death of Ruth K. Jackson, both parties move the Court at this time for the Court to dismiss this action with prejudice to any future action.

FILED

APR 29 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Francis McBride
Attorney for Plaintiff

Robert M. Hollen
Attorney for Defendant

ORDER

This matter comes on for hearing on the joint application of the plaintiff and the defendant for an Order of Dismissal. The Court being fully advised in the premises finds that the matter has been settled and concluded and therefore orders the case dismissed with prejudice to any future action.

W. Dale Book
Judge of the District Court

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UTICA NATIONAL BANK & TRUST
COMPANY, a National Banking
Association,

Plaintiff,

VS.

FRANK E. FREY, E. H. HOFFMAN,
T. J. KREATSCHMAN and TOM L.
WALKER,

Defendants.

No. 75-C-399

FILED
IN OPEN COURT

APR 23 1976

JACK C. SILVER, CLERK
U. S. DISTRICT COURT

J U D G M E N T

NOW on this 23rd day of April, 1976, came on for hearing the Motion for Default Judgment filed in the above entitled cause by the Plaintiff, Utica National Bank & Trust Company. The Court, having reviewed the records and pleadings filed herein and deliberation having been had, finds that the Defendants, Frank E. Frey and E. H. Hoffman, are in default and that the default has been entered by the Clerk, and finds that the said Defendants, Frank E. Frey and E. H. Hoffman, are jointly and severally indebted to the Plaintiff, Utica National Bank & Trust Company, in the sum of \$ 13,016.66, a reasonable attorney's fee in the amount of \$ 2,000⁰⁰, accruing by reason of said underlying indebtedness, the costs of this action in the amount of \$48.88, interest on the total of the above sum from the date of this judgment at the rate of 10% per annum until paid.

W. J. Salebook

Judge

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMACIVIL ACTION FILE NO. 75-C-249-*c*

AFFILIATED FM INSURANCE COMPANY,

Plaintiff,

vs.

NORDSTROM-LARPENTEUR AGENCY and
NORDSTROM-LARPENTEUR OF OKLAHOMA,
INC., an Oklahoma corporation

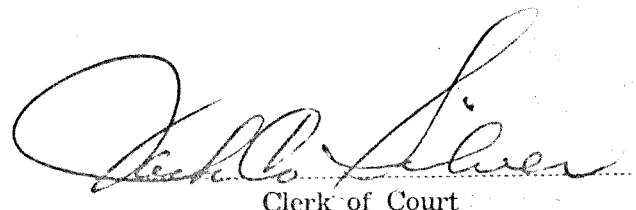
FILED JUDGMENT

APR 22 1976 *hmm*

Jack C. Silver, Clerk

U. S. DISTRICT COURT

This action came on for trial before the Court and a jury, Honorable H. Dale Cook

, United States District Judge, presiding, and the issues having been duly tried and
the jury having duly rendered its verdict,It is Ordered and Adjudged that the plaintiff take nothing and that the
defendants recover of the plaintiff their costs of action.Dated at Tulsa, Oklahoma, this 22nd day
of April, 1976.
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT L. CANNON and
EUNICE CANNON, husband
and wife,

Plaintiff,

vs

TOM N. KELTNER, SPENCER W.
LYNN, DENNIS JOHNSON, DON
T. RAUZ, FRANK CHILDERS and
JOHNIE RAINS,

Defendants.

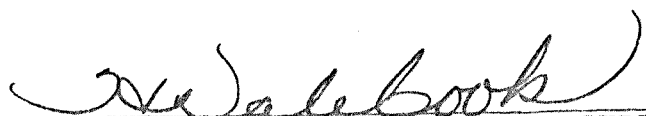
NO. 75-C-412

FILED
APR 22 1976
Jack G. Smith, Clerk
U.S. DISTRICT COURT

ORDER DISMISSING DEFENDANT, TOM N. KELTNER,
WITHOUT PREJUDICE AND RIGHT TO REFILE
AGAINST HIM AND DISMISSING DEFENDANTS,
SPENCER W. LYNN, DENNIS JOHNSON, DON T. RAUZ,
FRANK CHILDERS AND JOHNIE RAINS WITH PREJUDICE

This cause came on for hearing on this 22nd day of April, 1976, upon application for dismissal with reservation as to defendant, Tom N. Keltner. The Court finds that said application should be granted and that the action should be dismissed with prejudice as to defendants, Spencer W. Lynn, Dennis Johnson, Don T. Rauz, Frank Childers and Johnie Rains, and dismissed without prejudice as to the defendant, Tom N. Keltner, with the plaintiffs having the right to refile against the defendant, Tom N. Keltner, if they so desire.

BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that this action be dismissed without prejudice as to the defendant, Tom N. Keltner, with the plaintiffs having the right to refile against Tom N. Keltner, if they so desire, and that it be dismissed with prejudice as to the defendants, Spencer W. Lynn, Dennis Johnson, Don T. Rauz, Frank Childers and Johnie Rains.


JUDGE OF THE UNITED STATES DISTRICT
COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF OKLAHOMA

ANGELA GENTRY, A Minor,
by and through her father and
next friend, Billy Ray Gentry,

Plaintiff

Vs.

LLOYD ALLEN and
MICHAEL B. ALLEN,

Defendants.

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PLAINTIFF'S NOTICE OF DISMISSAL

COMES NOW plaintiff above named and hereby gives notice, under the rules of this Court, of the settlement of this cause prior to defendant employing counsel, and advises the Court that this cause has been settled to the satisfaction of plaintiff and plaintiff hereby dismisses subject cause of action with prejudice.

Dated this 21ST day of April, 1976.

Billy Ray Gentry

Billy Ray Gentry, Father and
Next Friend of Angela Gentry,
A Minor

BOOTH & JAY

By *Robert W. Booth*

Robert W. Booth

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CIVIL ACTION NO. 75-C-437-C ✓
)
JACKSON LEE TANNER, LINDA JUNE)
TANNER, SAMUEL HOWARD a/k/a)
SAM HOWARD, BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma, COUNTY TREASURER,)
Tulsa County, Oklahoma, AETNA)
FINANCE COMPANY, a Corporation,)
PATTON LOANS OF TULSA, INC.,)
WALDO E. JONES, SR., and)
OKLAHOMA TAX COMMISSION,)
)
Defendants.)

FILED

APR 21 1976

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 21st
day of April, 1976, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; and the Defendants, Board of
County Commissioners, Tulsa County, Oklahoma, and County
Treasurer, Tulsa County, Oklahoma, appearing by its attorney,
Gary J. Summerfield, Assistant District Attorney; Oklahoma Tax
Commission appearing by its attorney, Clyde E. Fosdyke; Aetna
Finance Company appearing by its attorney, George P. Phillips;
and the Defendants, Jackson Lee Tanner, Linda June Tanner,
Samuel Howard a/k/a San Howard, Patton Loans of Tulsa, Inc. and
Waldo E. Jones, Sr., appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Jackson Lee Tanner, Linda
June Tanner, and Patton Loans of Tulsa, Inc., were served by
publication as shown on the Proof of Publication filed herein;
that Defendant, Oklahoma Tax Commission, was served with Summons,
Complaint and Amendment to Complaint on October 29, 1975; that
Defendant, Aetna Finance Company, was served with Summons,
Complaint and Amendment to Complaint on September 24, 1975, and

October 28, 1975, respectively; that Defendants, Board of County Commissioners, Tulsa County, Oklahoma, and County Treasurer, Tulsa County, Oklahoma, were served with Summons, Complaint and Amendment to Complaint on September 26, 1975, and October 30, 1975, respectively; that Defendant, Waldo E. Jones, Sr., was served with Summons, Complaint and Amendment to Complaint on October 7, 1975, and October 29, 1975, respectively; that Defendant, Samuel Howard a/k/a Sam Howard, was served with Summons, Complaint and Amendment to Complaint on October 8, 1975, and January 6, 1976, respectively; all as appears from the United States Marshal's Service herein.

It appearing that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, have duly filed its answers herein on October 10, 1975; that the Defendant, Aetna Finance Company, has duly filed its disclaimer on October 17, 1975; that Defendant, Oklahoma Tax Commission, has duly filed its answer and cross-petition on November 19, 1975; and that Defendants, Jackson Lee Tanner, Linda June Tanner, Samuel Howard a/k/a Sam Howard, Patton Loans of Tulsa, Inc., and Waldo E. Jones, Sr., have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Forty-seven (47), Block Fifty-two (52);
VALLEY VIEW ACRES THIRD ADDITION to the City
of Tulsa, Tulsa County, Oklahoma, according
to the recorded plat thereof.

THAT the Defendants, Jackson Lee Tanner and Linda June Tanner, did, on the 8th day of February, 1968, execute and deliver to the Veterans Administration their mortgage and mortgage note in the sum of \$10,250.00 with 6 percent interest per annum,

and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Samuel Howard a/k/a Sam Howard, was the grantee in a deed from Defendants, Jackson Lee Tanner and Linda June Tanner, dated April 22, 1972, filed April 27, 1972, in Book 4013, Page 1981, records of Tulsa County, wherein Defendant, Samuel Howard a/k/a Sam Howard, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Jackson Lee Tanner, Linda June Tanner, and Samuel Howard a/k/a Sam Howard, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$9,285.57, as unpaid principal with interest thereon at the rate of 6 percent per annum from December 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendant, Samuel Howard a/k/a Sam Howard, the sum of \$ 1.79 plus interest according to law for real estate taxes for the year(s) 1975 and that Tulsa County should have judgment, in rem, for said amount, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

The Court further finds that Defendant, Oklahoma Tax Commission, is entitled to judgment against Defendant, Samuel Howard a/k/a Sam Howard, in the amount of \$107.80 plus interest at the rate of 6 percent per annum plus costs accrued and accruing, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Jackson Lee Tanner and Linda June Tanner, in rem, and Samuel Howard a/k/a Sam Howard, in personam, for the sum of \$9,285.57 with interest thereon at the rate of 6 percent per annum from December 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendant, Samuel Howard a/k/a Sam Howard, for the sum of \$ 1.79 as of the date of this judgment plus interest thereafter according to law for real estate taxes and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Oklahoma Tax Commission have and recover judgment against the Defendant, Samuel Howard a/k/a Sam Howard, in the amount of \$107.80 plus interest at the rate of 6 percent per annum plus costs accrued and accruing as of the date of this judgment, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Patton Loans of Tulsa, Inc. and Waldo E. Jones, Sr.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property

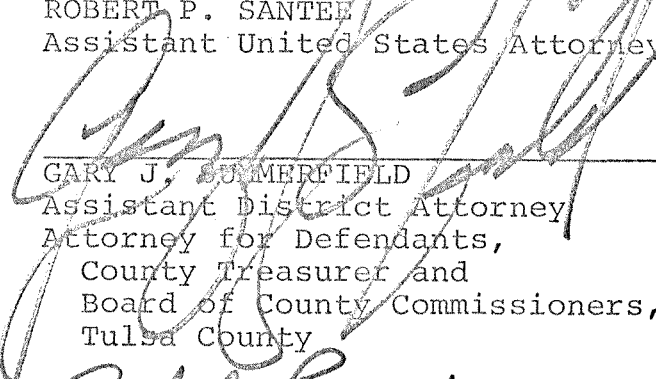
and apply the proceeds thereof in satisfaction of Plaintiff's judgment, which sale shall be subject to the tax judgment of Tulsa County, supra. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

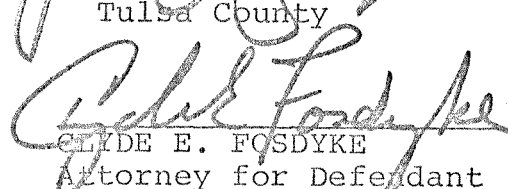
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed of any right, title, interest, or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.


UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. SANTEE
Assistant United States Attorney


GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County


CLYDE E. FOSDYKE
Attorney for Defendant
Oklahoma Tax Commission

E I L

DOCKET NO. 211

APR 14 1976

THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE: JACK C. SILVER
ROBINS CO., INC. "DALKON SHIELD" JUD. PRODUCTION
U.S. DISTRICT COURT

FILED

Cynthia Ellen Hostetler, et al. v. A. H. Robins Co., Inc.
N.D. Oklahoma, Civil Action No. 76-C-102

APR 16 1976

CONDITIONAL TRANSFER ORDER

ARTHUR G. JOHNSON, Clerk

By Arthur G. Johnson Deputy

On December 8, 1975, after notice and hearing the Panel transferred 53 related civil actions to the United States District Court for the District of Kansas for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time more than 75 additional actions have been transferred to the District of Kansas. With the consent of that court, all such actions have been assigned to the Honorable Frank G. Theis.

It appears from the pleadings filed in the above-captioned action that it involves questions of fact which are common to the actions previously transferred to the District of Kansas and assigned to Judge Theis.

Pursuant to Rule 9 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 65 F.R.D. 253 (1975), the above-captioned tag-along action is hereby transferred on the basis of the opinion and order of December 8, 1975, F.Supp., and with the consent of that court assigned to the Honorable Frank G. Theis.

This order does not become effective until it is filed in the office of the Clerk for the United States District Court for the District of Kansas. The transmittal of this order to said Clerk for filing shall be stayed fifteen days from the entry thereof and if any party files a Notice of Opposition with the Clerk of the Panel within this fifteen-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

No objection having been received during the stay period, the stay was lifted and this order became effective on

Patricia D. Howard

Patricia D. Howard
Clerk of the Panel

APR 14 1976

Patricia D. Howard
Clerk of the Panel

ATTEST: A true copy
ARTHUR G. JOHNSON, Clerk

By Arthur G. Johnson
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

-v-

WOODROW PROCTOR, ET AL,

Defendants.

APR 19 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Civil Action No. 75-C-511 C

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 19th
day of April, 1976, the plaintiff appearing by Robert P. Santee,
Assistant United States Attorney; the defendants Board of County
Commissioners, Tulsa County, and County Treasurer, Tulsa County,
appearing by their attorney, Gary J. Summerfield; and the defen-
dants Woodrow Proctor and Dianne S. Proctor appearing not.

The Court, being fully advised and having examined the
file herein, finds that Woodrow Proctor and Dianne S. Proctor
were served by publication, as appears from Proof of Publication
filed herein, and that Board of County Commissioners, Tulsa County,
and County Treasurer, Tulsa County, were served with Summons and
Complaint on November 12, 1975, as appears from the Marshal's
Returns of Service filed herein.

It appears that Board of County Commissioners, Tulsa
County, and County Treasurer, Tulsa County, have duly filed their
Answers herein on December 1, 1975, and that Woodrow Proctor and
Dianne S. Proctor have failed to answer herein and that default
has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon
a mortgage note and foreclosure on a real property mortgage secur-
ing said mortgage note, covering the following-described real
property located in Tulsa County, Oklahoma, within the Northern
Judicial District of Oklahoma:

Lot Thirty-Three (33), Block Forty-One (41),
VALLEY VIEW ACRES SECOND ADDITION to the City
of Tulsa, Tulsa County, Oklahoma, according
to the recorded Plat thereof.

THAT the defendants Woodrow Proctor and Dianne S. Proctor did, on the 30th day of June, 1973, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the amount of \$10,800.00, with 4-1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants Woodrow Proctor and Dianne S. Proctor made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than twelve months last past, which default has continued, and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the amount of \$10,520.93, with interest thereon at the rate of 4-1/2 percent per annum from February 1, 1975, until paid, plus the cost of this action, accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from defendants Woodrow Proctor and Dianne S. Proctor, the sum of \$23.00 plus interest according to law, for personal property taxes for the year(s) 1974 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants Woodrow Proctor and Dianne S. Proctor, in rem, for the sum of \$10,520.93, with interest thereon at the rate of 4-1/2 percent per annum from February 1, 1975, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

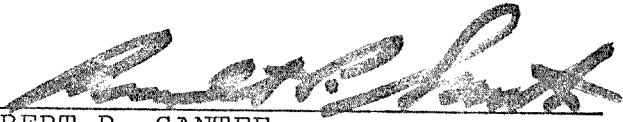
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against defendants Woodrow Proctor and Dianne S. Proctor for the sum of \$ 23.00 as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

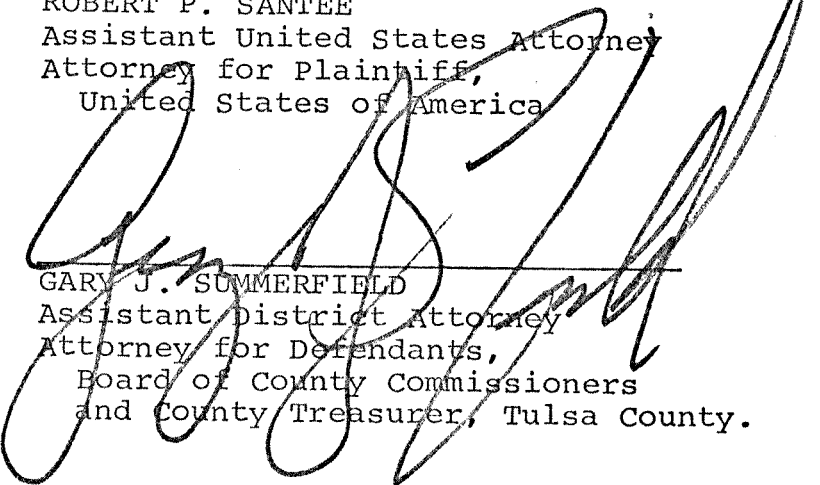
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants, and each of them, and all persons claiming under them since the filing of the complaint herein, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.


United States District Judge

APPROVED:


ROBERT P. SANTEE
Assistant United States Attorney
Attorney for Plaintiff,
United States of America


GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
Board of County Commissioners
and County Treasurer, Tulsa County.

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LEROY LOGAN, et al.,)
) Civil No. 74-C-297
 Plaintiffs,)
)
vs.)
)
THOMAS S. KLEPPE, Secretary)
of the Interior, et al.,)
)
 Defendants.)

O R D E R

FILED
IN OPEN COURT

APR 15 1976

JACK C. SILVER, CLERK
U. S. DISTRICT COURT

This cause came on for pretrial conference on
April 15, 1976. Pursuant to the parties' request and the
Court being fully informed in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED that this case be
dismissed without prejudice to any party.



United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES NORWOOD HUTCHING,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

No. 76-C-45-D

FILED

APR 14 1976

O R D E R

Jack C. Silver, Clerk
U. S. DISTRICT COURT

This is a proceeding brought pursuant to Title 28, U. S.C.A. § 2255 in which the petitioner attacks the validity of the sentence imposed in case No. 74-CR-74 in the United States District Court for the Northern District of Oklahoma on the grounds that the Indictment was defective, the evidence was insufficient and that he was denied the effective assistance of counsel.

A Motion pursuant to § 2255 is not a substitute for appeal. Carillo v. United States, 332 F.2d 202 (CA10 1964). It encompasses only those matters which may be raised by collateral attack. United States v. Kelley, 269 F.2d 448 (CA10 1959). It is the general rule that the sufficiency of an indictment cannot be challenged in a collateral proceeding. Barnes v. Hunter, 188 F.2d 186 (CA10 1951). See also Peyton v. United States, 436 F.2d 575 (CA10 1970). The same is true of a claim that the evidence was insufficient to convict. Lorraine v. United States, 444 F.2d 1 (CA10 1971).

Here the petitioner asserts that the indictment charging an offense under Title 21, United States Code Section 846 was deficient because it referred to "marijuana" without alleging the particular species defined in 21 U.S.C. § 802(15). The basis for his argument was considered and rejected by the court in United States v. Ludwig, 508 F.2d 140, 142 (CA10 1974):

"The keystone of this argument is, of course, that there are three distinct species of plants known collectively as marihuana; that Congress intended to criminalize only one species of marihuana; and that a contrary interpretation of the pertinent sections would leave the average

citizen without sufficient notice of the activity sought to be prohibited. This same argument has been made in numerous cases and has been uniformly rejected. Thus, in *United States v. King*, 10 Cir., 485 F2 353, we referred approvingly to *United States v. Moore*, 3 Cir., 446 F2 448, cert. denied, 406 U.S. 909, where it was noted that

[M]arihuana, a term of Mexican origin, is the dried leaves and flowering tops of a plant species commonly known as hemp. Botanically, the hemp plant is called *Cannabis Sativa* L. There is only one species of this plant. *Leary v. United States*, 395 U.S. 6, 50 However, because of the difference in soil content and climatic conditions, the plant grown in various parts of the world is not physically the same. . . . *Cannabis indica* is the name given to *Cannabis Sativa* L. grown in India.

446 F2 at 450. Accord, *United States v. Gaines*, 5 Cir., 489 F2 690; and *United States v. Rothberg*, 2 Cir., 480 F2 534, cert. denied, 414 U.S. 856, wherein the court countenanced the possibility that *Cannabis* is botanically polytypal but rejected defendant's argument nonetheless."

A later appeal that Ludwig should be reconsidered was declined in United States v. Spann, 515 F2d 579 (CA10 1975).

In this collateral proceeding we certainly cannot say that the indictment fails under any reasonable construction to charge the offense for which sentence was imposed. Byers v. United States, 175 F.2d 654 (CA10 1949). See also Martinez v. United States, 216 F.2d 760 (CA10 1954). Neither can we say that this indictment attempts to charge a non-existent federal offense nor that it affirmatively appears on its face that no federal offense was committed, as would be necessary to entitle petitioner to relief herein. Barnes v. Hunter, supra. See also Kreuter v. United States, 201 F.2d 33 (CA10 1952); Smith v. United States, 205 F.2d 768 (CA10 1953).

"Given a practical common sense construction" the indictment here meets the test of sufficiency on this Section 2255 Motion as it "can reasonably be said to inform the defendant of the charge against him, so that he can prepare his defense thereto and plead the judgment as a bar to further proceedings against him for the same offense." Martin v. United States, 285 F.2d 151 (CA10 1962). We conclude, as did the court in Charley v. United States, 303 F.2d 512, 513 (CA10 1962):

"And, where, as here, the trial court has jurisdiction of the offense and the accused, and the indictment

apparently attempts to charge that offense, the sufficiency of the indictment is not subject to collateral attack by a motion under Section 2255."

The corresponding complaint that the evidence was for the same reason insufficient, accordingly, is likewise without merit.

The petitioner's condemnation of his retained counsel is primarily founded upon the belated view that he now knows more about the law and trial strategy than did his lawyer. Counsel cannot be faulted at trial for not pursuing defenses which had no legal merit. Counsel retained by petitioner must be his own responsibility. Plaskett v. Page, 439 F.2d 770 (CA10 1971). The witnesses which are to be called in a trial are a matter for the trial counsel to determine. Grant v. State of Oklahoma, 382 F.2d 270 (CA10 1967). Where an accused is represented by an attorney of his own selection he is bound by his decision as to trial strategy. United States v. Hill, 310 F.2d 601 (CA4 1962); United States v. Bertone, 249 F.2d 156 (CA3 1957). The effective assistance of counsel does not mean victorious or flawless counsel. Brady v. United States, 433 F.2d 924 (CA10 1970). As pointed out by our Court of Appeals, in Frاند v. United States, 301 F.2d 102, 103 (CA10 1962):

"But the constitutional right to the effective assistance of counsel does not vest in the accused the right to the services of an attorney who meets any specific aptitude in point of professional skill. And common mistakes of judgment on the part of counsel, common mistakes of strategy, common mistakes of trial tactics, or common errors of policy in the course of a criminal case do not constitute grounds for collateral attack on a judgment and sentence by motion under the statute. It is instances in which resulting in the substandard level of the services of the attorney that the trial becomes a mockery and farcical that the judgment is open to collateral attack on the grounds that the accused is deprived of his constitutional right to the effective assistance of counsel."

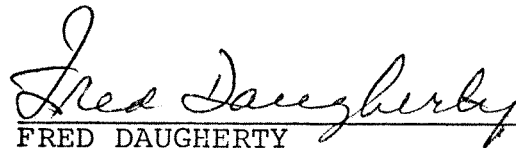
Because the defense was unsuccessful and because the petitioner now concludes that the defense did not meet his standards of effectiveness does not destroy the essential integrity of the proceedings or constitute a denial of due process. See Moss v. Hunter, 167 F.2d 683 (CA10 1948), cert. denied, 334 U.S. 860, reh. denied, 335 U.S. 839. The burden on the petitioner to establish a claim of ineffective assistance of counsel is great and is not measured by the wisdom

born of hindsight. Ellis v. Oklahoma, 430 F.2d 1352 (CA10 1970).
The representation must have been such as to make the trial a
mockery, sham or farce. Basker v. Crouse, 426 F.2d 531 (CA10 1970).
The allegations of petitioner in this case do not meet this test.
The record itself refutes any suggestion that the trial was a sham
or pretense.

Since the files and records examined by the court conclusively show that the petitioner is not entitled to relief and there are no material issues of fact an evidentiary hearing is not required. Semet v. United States, 369 F.2d 90 (CA10 1966).
Accordingly, the Motion pursuant to 28 U.S.C.A. § 2255 will be denied.

IT IS SO ORDERED.

Dated this 14th day of April, 1976.


FRED DAUGHERTY
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

UNITED STATES OF AMERICA,

Plaintiff,

-v-

JACK PATTON, ET AL,

Defendants.)

Civil Action No. 76-C-53C

APR 9 1976

Jack C. Silver
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 9th day of April, 1976, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the defendants, Jack Patton and Juanita L. Patton, appearing not.

The Court, being fully advised and having examined the file herein, finds that Jack Patton and Juanita L. Patton were served with Summons and Complaint on February 19, 1976, as appears from the Marshal's Returns of Service filed herein.

It appears that the said defendants have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note, covering the following-described real property located in Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots 1 and 2, Block 12, Prudom Addition
to Pawhuska, Osage County, Oklahoma.

THAT the defendants, Jack Patton and Juanita L. Patton, did, on the 10th day of August, 1972, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the amount of \$9,000.00, with 7-1/4 percent interest per annum, and further providing for the payment of annual installments of principal and interest.

The Court further finds that the defendants, Jack Patton and Juanita L. Patton, made default under the terms of the aforesaid mortgage note by reason of their failure to make annual installments due thereon, which default has continued and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the amount of \$9,256.90 as of October 31, 1975, plus interest from and after said date at the rate of 7-1/4 percent per annum, until paid, plus the cost of this action, accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Jack Patton and Juanita L. Patton, in personam, for the sum of \$9,256.90, with interest thereon at the rate of 7-1/4 percent per annum from October 31, 1975, plus the cost of this action, accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants, and each of them, and all persons claiming under them since the filing of the complaint

herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.


United States District Judge

APPROVED.


ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DAVID EUGENE EVANS,

Petitioner,

vs.

STATE OF OKLAHOMA, RICHARD
CRISP, Warden of the Oklahoma
State Penitentiary at
McAlester,

Respondents.

No. 76-C-13-C ✓

FILED

APR 9 1976

ORDER

Jack C. Silver, Clerk
U. S. DISTRICT COURT

The Court has before it for consideration a Petition filed by David Eugene Evans pursuant to Title 28 U.S.C. § 2254. Leave to file his petition for writ of habeas corpus in forma pauperis was allowed by Order of this Court entered on January 14, 1976. On February 19, 1976, the Court entered an Order directing respondents to show cause why the writ of habeas corpus sought by petitioner should not be granted in regard to petitioner's first proposition of error. Respondents were further directed to provide the Court with the transcript and other written indicia resulting from the proceedings.

Based upon a thorough examination of the allegations of petitioner and the response filed thereto, and after a careful review of the record, the Court makes the following determination.

Petitioner's second and third propositions of error do not go to the issue of guilt or innocence and the alleged error could merely have a possible effect on the length of sentence. These allegations were submitted to the Oklahoma Court of Criminal Appeals and that court reduced petitioner's sentence from 201 years confinement to 60 years confinement. As stated in the Order of this Court entered February 19, 1976, the length

of sentence is not a federal question since it involves the interpretation of state statutes and does not involve a constitutional question. Avent v. Peyton, 294 F.Supp. 262 (E.D. Va. 1968). Federal courts have no right to review any sentence of a state court which does not exceed the statutory maximum which may be imposed under the laws of the state. Pisani v. Warden, Maryland Penitentiary, 289 F.Supp. 232 (D.Md. 1968). It is therefore the determination of the Court that petitioner's second and third propositions of error do not afford a basis for habeas corpus relief.

Petitioner's first proposition of error alleges that the court erred in refusing to quash his in-court identification. This contention is based upon statements made by two witnesses to the alleged crime who, at trial, made in-court identifications of petitioner. Prior to trial, one witness was shown ten photographs of white male caucasians of approximately the same age from which he identified petitioner as the perpetrator of the crime. The other witness identified petitioner from a line-up held prior to trial. The record discloses that both witnesses testified that petitioner was the only individual in the line-up and photographic spread that resembled the description the witnesses furnished the police. The statements made by the witnesses do not clearly indicate whether, in fact, the photographs and line-up were impermissibly suggestive or whether the witnesses were so positive of their identifications that there was no doubt in their minds that petitioner was the perpetrator of the crime.

The Supreme Court in Neil v. Biggers, 409 U.S. 188, 92 S.Ct. 1167, 31 L.Ed.2d 230 (1972) considered the effect of a possibly suggestive pretrial identification. As noted by the Court, "the primary evil to be avoided is a very substantial likelihood of irreparable misidentification It is the likelihood of misidentification which violates a defendant's

right to due process." As stated by the Court:

"We turn then, to the central question, whether under the 'totality of the circumstances' the identification was reliable even though the confrontation procedure was suggestive. As indicated by our cases, the factors to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, the length of time between the crime and the confrontation."

The record in this case indicates that both witnesses, as victims of the crime, had an opportunity to view petitioner at close range during the time of commission of the crime. Both witnesses had a clear view of petitioner and were able to give an accurate description to police officers.

When the first witness, Mike Pugh, testified at trial, he was asked: "Is there any doubt in your mind, Mike, that this is one and the same man you saw Gary Bryan handing the money to on the 21st of March of 1974?" His answer was: "There is no doubt." On cross-examination, he indicated affirmatively when asked: "You are positive, Mike?" Similarly, the second witness, Gary Bryan was asked: "Is there any doubt in your mind that this is one and the same man that robbed you on the 21st of March?" He replied: "No, sir, there isn't." This Court does not have a copy of the photographs presented to the witness or knowledge of the composition of the line-up and cannot, therefore, determine whether the identification procedure was suggestive. Based upon an examination of the record, however, the Court can determine that even if the pre-trial photographs and line-up identifications were improperly conducted, it was harmless error since the testimony clearly demonstrates that the in-court identifications of petitioner were independent and untainted by any prior photographic or line-up identifications. At the preliminary hearing held in regard to the out-of-court

identification, Mr. Bryan testified during cross-examination as follows:

"Q. I know you identified the man in Court here, today. Are you, sir, identifying the picture you saw or are you identifying the man that was there, that night?

"A. The man that came to the store, that night.

"Q. Did the fact that you had seen a picture lead you in any way in your identification here, today?

"A. No."


In Powell v. Wainwright, 460 F.2d 1056 (5th Cir. 1972), a state prisoner similarly petitioned for writ of habeas corpus alleging that a pretrial photographic identification had been impermissibly suggestive. The Court held:

"[E]ven had the pre-trial identification been in some fashion impermissibly suggestive, we would nevertheless find [petitioner's] contention to be without merit. Examination of [the witness] demonstrates unequivocally that her in-court identification of [petitioner] was based upon her observations of him at the scene of the crime. During the crime she had ample opportunity to see [petitioner] in good lighting several times over a two-hour period. Her categorical and unshakable identification of him at trial was made completely independent of and untainted by the pre-trial photographic identification. If there was error in that procedure, it was harmless beyond a reasonable doubt."

See also Kelley v. Estelle, 521 F.2d 238 (5th Cir. 1975); United States v. Lincoln, 494 F.2d 833 (9th Cir. 1974); Souza v. Howard, 488 F.2d 462 (1st Cir. 1973); Kalmbach v. Jones, 488 F.2d 135 (5th Cir. 1973).

Based upon the above, it is the determination of the Court that the petition for writ of habeas corpus should be, and hereby is, denied.

It is so Ordered this 9th day of April, 1976.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MILDRED AGEE, et al.,

Plaintiffs,

-v-

PREFERRED SECURITY LIFE
INSURANCE COMPANY OF
OKLAHOMA, et al.,

Defendants.

Cause No. 72-C-410

FILED

APR 9 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER APPROVING SETTLEMENT

This matter came on for hearing at 10:00 a.m. on Friday, April 2, 1976, pursuant to the Order of this Court dated March 9, 1976, and pursuant to the Notice of Pendency of Class Action dated March 8, 1976, in the conference room of the Chief Judge, the Honorable Royce H. Savage, Special Master, presiding. The Plaintiff Class was represented by Frederic Dorwart and Judith K. Pensabene. The Insurance Commissioner of the State of Oklahoma, as receiver ("Receiver") of Preferred Security Life Insurance Company of Oklahoma ("Preferred Security") was represented by Paul Ferguson. The defendants A. L. Bennett, M. C. Fuquay, O. G. Garriott, F. Gass, H. R. Krob, G. E. McArthur and W. N. Pritchett ("Settling Defendants") were represented by Deryl L. Gotcher. The defendant William E. Golden was represented by Arnold D. Fagin. The defendants Bob J. Rogers, E. Wendell Hurt, Bill D. Ballard, Norman R. Pilgrim, F. H. Rogers and Atkin C. Flett ("Non-Settling Defendants") were represented by W. Rodney DeVilliers.

The Court finds that due and proper notice of this hearing has been given in accordance with the Federal Rules of Civil Procedure and the Order of this Court dated March 9, 1976. The Court approves the Certificate of Mailing of Wm. G. Fisher filed April 2, 1976.

The Court first considered the Application For Approval of Settlement Agreement filed January 8, 1976. In connection therewith the Court considered the Objection To Proposed Settlement Agreement filed by the Non-Settling Defendants and the Restatement of Objections To Proposed Settlement By Defendant W. E. Golden. The Court heard the statements of all counsel and reviewed the evidence of record and the proposed Settlement Agreement.

The Court finds that the proposed Settlement Agreement is fair, reasonable and adequate and should be approved.

The defendant W. E. Golden withdrew his objections to the proposed Settlement Agreement and offered to pay \$8,500 in settlement of this action and the claims of the Receiver on the same terms and conditions set forth in the Settlement Agreement. The Receiver and the Plaintiff Class accepted the offer of settlement and recommended its approval by the Court.

The Court finds that the offer of settlement of the defendant W. E. Golden is fair, reasonable and adequate and should be approved. The Court finds that the Notice of Pendency of Class Action and the notice of this hearing on settlement is an adequate notice to members of the Plaintiff Class and that no further notice of any kind of the Golden settlement is necessary.

The Court finds that the objections of the Non-Settling Defendants should be overruled; provided, however, any member of the Plaintiff Class who feels he may have received factually incorrect information in conversations with Jim Swank, Sr. or any counsel herein, which caused such member not to elect to be excluded from the Plaintiff Class, may, on or before April 12, 1976, file an application with the Court for permission to elect to be excluded from the class, which application shall thereafter be set for hearing in due course.

The Court then asked the parties what pre-trial discovery remained to be accomplished. Counsel to the Non-Settling Defendants advised the Court the Non-Settling Defendants might seek to bring

in additional parties defendant. Counsel to the Plaintiff Class advised the Court the Plaintiff Class might object thereto because of possible trial delays resulting therefrom. The Court stated that the question of additional parties should be resolved before additional discovery is conducted.

IT IS, THEREFORE, ORDERED AND ADJUDGED that due and proper notice of this hearing has been given in accordance with the Federal Rules of Civil Procedure and the Order of this Court dated March 9, 1976.

IT IS FURTHER ORDERED AND ADJUDGED that the Certificate of Mailing of Wm. G. Fisher filed April 2, 1976, is hereby approved.

IT IS FURTHER ORDERED AND ADJUDGED that the proposed Settlement Agreement is fair, reasonable and adequate and is hereby approved.

IT IS FURTHER ORDERED AND ADJUDGED that the offer of settlement of the defendant W. E. Golden is fair, reasonable and adequate and is hereby approved.

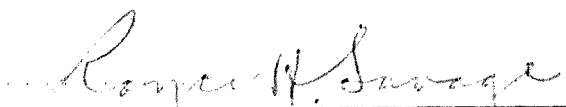
IT IS FURTHER ORDERED AND ADJUDGED that the Notice of Pendency of Class Action and the notice of this hearing on settlement is adequate notice to members of the Plaintiff Class of the Golden settlement and that no further notice of any kind of the Golden settlement is necessary.

IT IS FURTHER ORDERED AND ADJUDGED that the objections of the Non-Settling Defendants to the proposed settlement are overruled; provided, however, any member of the Plaintiff Class who feels he may have received factually incorrect information in conversations with Jim Swank, Sr. or any counsel herein which caused such member not to elect to be excluded from the Plaintiff Class, may, on or before April 12, 1976, file an application with the Court for permission to elect to be excluded from the class, which application shall thereafter be set for hearing in due course.

IT IS FURTHER ORDERED AND ADJUDGED that the Non-Settling Defendants shall, on or before April 23, 1976, file any motions for leave to join additional parties in this action, or be thereafter

barred therefrom.

DATED this 2nd day of April, 1976.




Royce H. Savage, Special Master

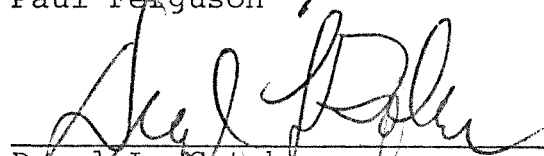
APPROVED AS TO FORM:



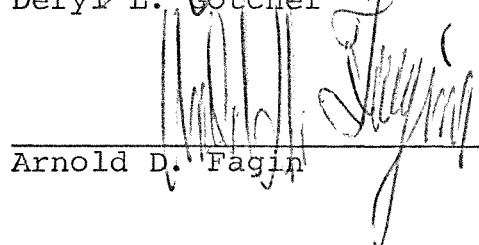
Frederic Dorwart



Paul Ferguson



Deryl L. Gotcher



Arnold D. Fagin

Rodney DeVilliers

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

Apr 7, 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

GENSCO, INC., a corporation,

Plaintiff,

-VS-

FRED LUKE,

Defendant.

No. 74-C-253

Stipulation of

DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff, Gensco, Inc., a corporation,
by its attorney, James Elder, and stipulates to the dismissal
with prejudice of the above styled matter.

GENSCO, INC., a corporation

By: James Elder
Attorney for Plaintiff

No objections:

Samuel E. Lysick
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ANNE M. McDONALD, et al,

Plaintiffs,

vs.

LAWRENCE N. HURWITZ, et al,

Defendants.

NO. ~~73-C-261~~ **FILED**

APR 6 1976 *pm*

Jack C. Silver, Clerk

ORDER DISMISSING CAUSE WITH PREJUDICE S. DISTRICT COURT

THIS CAUSE, coming on before me, the undersigned Judge, this 5 day of April, 1976, upon the Joint Application of counsel for the parties hereto, and the Court being satisfied for good cause shown that the previous "Order Approving Settlement and Fixing Compensation" entered by this Court March 4, 1976 has been fully complied with and that all sums due by the terms of such settlement have been fully paid and satisfied and all monies disbursed in accordance with the terms of the prior Order of this Court, and there remains nothing further in connection with said settlement or this action except to dismiss the cause with prejudice as against the Defendants Lawrence N. Hurwitz, Norman Raskin and Aberdeen Power, Inc.;

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED that the above and foregoing action be and the same is hereby dismissed WITH PREJUDICE as against the Defendants Lawrence N. Hurwitz, Norman H. Raskin and Aberdeen Power, Inc.

Ired Daugherty
UNITED STATES DISTRICT JUDGE

APPROVED:

Royce H. Savage
ROYCE H. SAVAGE

L. K. Smith
L. K. SMITH
Attorneys for Plaintiffs

JONES, GIVENS, BRETT, GOTCHER, DOYLE & BOGAN, INC.,

By: *Jack R. Givens*
JACK R. GIVENS
Attorneys for Defendants Hurwitz,
Raskin, and Aberdeen Power, Inc.

MARTIN, LOGAN, MOYERS, MARTIN & CONWAY,
By: *Ronald G. Raynolds*
RONALD G. RAYNOLDS
Attorneys for Aberdeen Petroleum
Corporation

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LEO C. GUYNN,

Plaintiff,

-vs-

UNITED STATES OF AMERICA,
SECRETARY, DEPARTMENT OF
HEALTH, EDUCATION, and
WELFARE, SOCIAL SECURITY
ADMINISTRATION,

Defendants.

Case No. 74-C-401 Civil

FILED

APR 6 1976

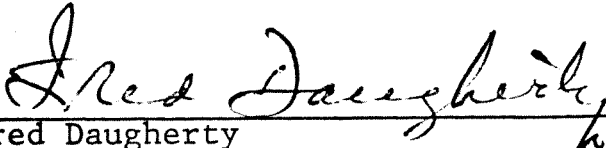
JUDGMENT

Jack C. Silver, Clerk
U. S. DISTRICT COURT

This cause having been considered by the Court on the pleadings, the entire record certified to this Court by the Defendant, and after due proceedings had, and upon examination of the pleadings and record filed herein, including the Briefs submitted by the parties, the Court is of the opinion as shown by its Memorandum Opinion filed herein of even date that the final decision of the Secretary of HEW is supported by the substantial evidence required by the Social Security Act, and should be affirmed;

IT IS THEREFORE ORDERED, DECREED and ADJUDGED that the final decision of the Secretary of HEW should be and hereby is affirmed.

Dated this 6th day of April, 1976.


Fred Daugherty
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JANICE DEMALA,

Plaintiff,

vs.

No. 75-C-533

COLONIAL LIFE AND ACCIDENT
INSURANCE COMPANY, a
corporation,

Defendant.

FILED


APR 5 1976

ORDER OF DISMISSAL

Jack C. Silver, Clerk
U. S. DISTRICT COURT

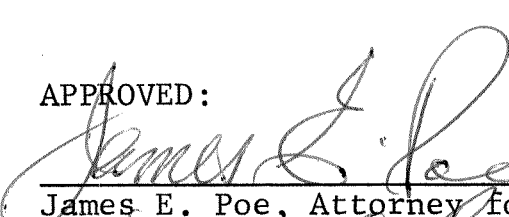
NOW ON this 5th day of April, 1976, the above styled
and numbered cause of action coming on for hearing before me
the undersigned Judge, upon the Stipulation and Motion for
Dismissal of the Plaintiff and Defendants herein; and the
Court having examined the pleadings and said Stipulation and
Motion for Dismissal and being well and fully advised in the
premises, is of the opinion that said cause should be dismissed
with prejudice.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the
Court that the above styled and numbered cause be and the same
is hereby dismissed with prejudice.



Jack C. Silver, Clerk

United States District Judge

APPROVED:


James E. Poe, Attorney for Plaintiff


Vernon A. Brown, Attorney for Plaintiff


William B. Selman, Attorney for Defendant

United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 75-C-222

AGRICO CHEMICAL COMPANY, a Delaware corporation

vs.

PROTECTION MUTUAL INSURANCE COMPANY, an Illinois
insurance corporation

JUDGMENT

FILED

APR 5 1976

Jack C. Silver, Clerk

U.S. DISTRICT COURT

This action came on for trial before the Court and a jury, Honorable H. Dale COBBETT

, United States District Judge, presiding, and the issues having been duly tried and
the jury having duly rendered its verdict,

It is Ordered and Adjudged that the plaintiff, Agrico Chemical Company,
recover judgment from the defendant, Protection Mutual Insurance Company,
on its property damages in the amount of \$449,412.50, and on its business
interruption damages in the amount of \$1,220,603.00, and that the plaintiff
be awarded its costs of action.

Dated at Tulsa, Oklahoma, this 5th day
of April, 19 76.

JACK C. SILVER

Clerk of Court

By

Maigrie Harrison
Chief Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

VIRGINIA DALLEN,)
)
Plaintiff,)
)
vs.) NO. 75-C-166 - *cc*
)
JANE PHILLIPS EPISCOPAL)
HOSPITAL, INC., JAMES W.)
ZEIDERS and J. L. BRYNGELSON,)
)
Defendants.)

FILED
APR 5 1976
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL


ON this 5th day of April, 1976, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the Defendants be and the same hereby is dismissed with prejudice to any future action.

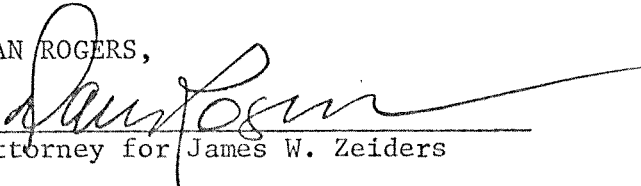

JUDGE, UNITED STATES DISTRICT COURT

APPROVALS:

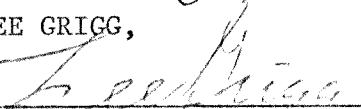
FRANK R. HICKMAN,


Attorney for the Plaintiff,

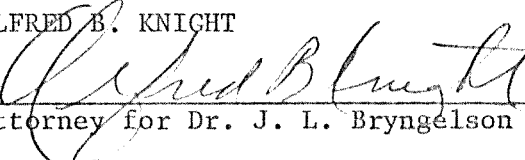
DAN ROGERS,


Attorney for James W. Zeiders

LEE GRIGG,


Attorney for Jane Phillips Hospital

ALFRED B. KNIGHT


Attorney for Dr. J. L. Bryngelson

IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE NORTHERN DISTRICT OF OKLAHOMA

CODDING EMBRYOLOGICAL SCIENCES,
INC.,

Plaintiff,

vs.

HARLAN F. MANWEILER, FREDERICK E.
GIGNOUX III, YVES M. COTY,
RICHARD R. ABIDIN, JR., BURMANSE
TRUST NO. 2, Individually and d/b/a
MGAC LIMITED PARTNERSHIP, and MGAC
LIMITED PARTNERSHIP, a Virginia
Limited Partnership,

Defendants.

No. 75-C-80-*c* ✓

FILED

APR 6 1976 *ph*

JOURNAL ENTRY OF JUDGMENT

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NOW on this 6th day of April, 1976, this matter comes on before the undersigned Judge pursuant to request by the parties for approval of their written Compromise And Settlement Agreement, Plaintiff appearing by its counsel of record, Doerner, Stuart, Saunders, Daniel & Langenkamp, by R. Dobie Langenkamp and Gary M. McDonald, and Defendants appearing by their counsel of record, Boone, Ellison & Smith by James O. Ellison and James R. Jessup, and the Court having reviewed the pleadings on file herein and the proposed Compromise And Settlement Agreement and having heard the statement of counsel and being fully advised in the premises, finds that such Compromise And Settlement Agreement should be approved in accordance with and upon the terms and conditions therein set forth and that Plaintiff should be granted Judgment against the Defendants, and each of them, jointly and severally for the sum of \$7,500.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the written Compromise And Settlement Agreement by and between the parties hereto be and the same is hereby approved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that pursuant to the terms and conditions of such written Compromise and Settlement Agreement Plaintiff have and recover Judgment of and from the Defendants, Harlan F. Manweiler, Frederick E. Gignoux III, Fred N. Colmer, Executor of the Estate of Yves M. Coty, Deceased, Richard R. Abidin, Jr., Burmanse Trust No. 2, and MGAC Limited Partnership, and each of them jointly and severally, for the sum of \$7,500.00, together with interest thereon at the rate of 8% per annum on any unpaid portion thereof for a period of one (1) year from date of Judgment and with interest thereon at the rate of 18% per annum for any unpaid portion of such sum which remains unpaid thereafter, and for a reasonable attorneys' fee to be fixed by this Court upon application of Plaintiff in the event any portion of such Judgment remains unpaid at the end of one year from this date.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of the respective parties hereto bear their own costs and attorneys' fees incurred herein.


H. DALE COOK, JUDGE OF THE UNITED STATES
DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THE AETNA CASUALTY AND SURETY)
COMPANY, a foreign corporation,)
)
Plaintiff,)
)
vs.)
)
NATIONAL BIO-LYTE SYSTEMS, INC.,)
an Oklahoma corporation, et al.,)
)
Defendants.)

No. 76-C-33 - c ✓

FILED
APR 5 1976

Jack G. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

There came on for hearing pursuant to regular assignment the Motion for Default Judgment against the defendant National Bio-Lyte Systems, Inc. of the plaintiff herein.

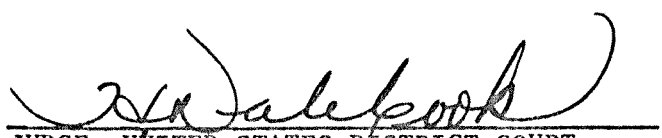
After a review of the Complaint and the allegations therein, the Court finds The Aetna Casualty and Surety Company, plaintiff, is licensed to do business in the State of Oklahoma and its citizenship and principal place of doing business is in the State of Connecticut and the City of Hartford, Connecticut. The Court further finds that the amount in controversy, exclusive of interest and costs, exceeds TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00). The Court specifically finds that the Court has venue and jurisdiction of the case.

The Court further finds that notice has been transmitted to National Bio-Lyte Systems, Inc., defendant, of the Motion for Default Judgment.

The Court further finds that the plaintiff is entitled to the relief prayed for.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff is entitled to judgment against the defendant National Bio-Lyte Systems, Inc., in the amount of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) plus interest, costs, and attorney fees..

IT IS FURTHER ORDERED that National Bio-Lyte Systems, Inc., is enjoined and restrained from prosecuting or litigating any claim against this plaintiff predicated on Bond #40SB23543.


JUDGE, UNITED STATES DISTRICT COURT

"EXHIBIT A"

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ST. PAUL INSURANCE COMPANY,)
)
Plaintiff,)
)
vs.)
)
RICHARD E. TERRY and NATHAN)
C. TIBLOW, individually and)
as FIVE STATE SALVAGE, a)
co-partnership,)
)
Defendants.)

No. 75-C-464

FILED

APR 5 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

There came on for hearing pursuant to regular assignment the Motion for Default Judgment of the plaintiff herein against Nathan C. Tiblow, individually and as Five State Salvage, a co-partnership.

After a review of the Complaint and the allegations therein, the Court finds that St. Paul Insurance Company, plaintiff, is licensed to do business in the State of Oklahoma and its citizenship and principal place of doing business is in the State of Minnesota and the City of St. Paul, Minnesota. The Court further finds that the amount in controversy, exclusive of interest and costs, exceeds TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00). The Court specifically finds that the Court has venue and jurisdiction of the case.

The Court further finds that notice has been transmitted to Nathan C. Tiblow, individually and as Five State Salvage, a co-partnership, defendant, of the Motion for Default Judgment.

The Court further finds that the plaintiff is entitled to the relief prayed for.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff is granted judgment against the defendant Nathan C. Tiblow, individually and as Five State Salvage, a co-partnership, in the amount of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) plus interest, costs, and attorney fees.

A/ W. Dale Cook
JUDGE OF THE DISTRICT COURT

"EXHIBIT A"

was appealed to the Appeals Council of the Bureau of Hearings and Appeals which Council on June 3, 1975 issued its order finding that the decision of the Administrative Law Judge was correct and that further action by the Council would not result in any change which would benefit the plaintiff. Thus the decision of the Administrative Law Judge became the final decision of the Secretary of the Department of Health, Education and Welfare.

Court review of the Secretary's denial of Social Security disability benefits is limited to a consideration of the pleadings and the transcript filed by the Secretary as required by 42 U.S.C. § 405(g), and is not a trial de novo. Atteberry v. Finch, 424 F.2d 36 (10th Cir. 1970); Hobby v. Hodges, 215 F.2d 754 (10th Cir. 1954). The findings of the Secretary and the inferences to be drawn therefrom are not to be disturbed by the courts if there is substantial evidence to support them. 42 U.S.C. § 405(g); Atteberry v. Finch, supra. In National Labor Relations Board v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300, 59 S.Ct. 501, 83 L.Ed. 660 (1939), the court, interpreting what constitutes substantial evidence, stated:

"It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."


Atteberry v. Finch, supra; Gardner v. Bishop, 362 F.2d 917 (10th Cir. 1966). See also Haley v. Celebrezze, 351 F.2d 516 (10th Cir. 1965); Folsom v. O'Neal, 250 F.2d 946 (10th Cir. 1957).

The transcript of the entire record of proceedings relating to the application of the plaintiff, Mellous W. Bullock, and filed of record in this cause has been carefully reviewed. The principal issue presented herein is whether the record, by substantial evidence, sustains the finding that the plaintiff is not under a disability as defined by the Social Security Act at any time prior to the date of that decision.

Section 223(d)(1) of the Social Security Act defines disability, as pertinent to the matters here in issue, as the "inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." Section 223(d)(2)(A) further provides that "an individual (except a widow, surviving divorced wife, or widower for purposes of § 202(e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work." A review of the record indicates that the plaintiff was found by the Administrative Law Judge to have an impairment which would restrict him from work activity, primarily the principal occupation he had followed as automotive mechanic while an employee of the Oklahoma Natural Gas Company. A vocational expert testified at the hearing concerning the residual and transferable skills retained by the plaintiff and further testified that in his opinion the plaintiff's residual training skills and education qualified plaintiff to satisfactorily perform a number of work positions which would not involve plaintiff in the use of hazardous machinery nor would require sudden movements as would precipitate attacks of vertigo. Thus, there was a finding, supported by the record based upon substantial evidence, that even though plaintiff was unable to engage in his previous employment, he could, considering his age, education and work experience, engage in other substantial gainful work activity which did exist in the national economy.

The findings of the Secretary are therefore supported by substantial evidence of record, are affirmed, and the Complaint is therefore dismissed.

It is so Ordered this 2ND day of April, 1976.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MARK FREEMAN, III,

Plaintiff,

vs.

LAYTON OIL COMPANY, a Corporation,
WILLIAM DOUGLAS LAYTON and CLYDE
G. LAYTON,

Defendants.

No. 75-C-9 *ce*

FILED

APR 1 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

ON this 5th day of April, 1976, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the Defendants be and the same hereby is dismissed with prejudice to any future action.

5/ H. Dale Cook

JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

NORTHCUTT & RALEY

By: *Alfred B. Knight*

Attorney for the Plaintiff,

ALFRED B. KNIGHT,
JOHN ATHENS

John Athens
Attorney for the Defendants.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MARCELLA SCHRUM,

Plaintiff,

v.

ST. JOHN'S HOSPITAL,

Defendant.

No. 75-C-481-C ✓

FILED

APR 1 1976

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Comes now the Plaintiff, by his attorney,
Ed Parks III, and dismisses his Action herein, the same having
been compromised and the sums having been paid the defendant.

It is thereby ordered by the Court that the
above entitled action be, and it is hereby dismissed with
prejudice.

Dated April 1st, 1976.

W. J. L. Book
Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MR. ACCOUNTABILITY BURNS,)
)
Plaintiff,)
)
vs.) 75-C-571-C ✓
)
JUDGE BARROW, US Government)
(HEW-FIPSE), and "Ma Bell-Tulsa)
Operator Division",)
)
Defendants.)

FILED
APR 1 1976
Jack C. Silver, Clerk
U S DISTRICT COURT
ph

O R D E R

The Court has before it for consideration Motions to Dismiss filed herein by the Honorable Judge Allen E. Barrow, Southwestern Bell Telephone Company, the United States of America and Charles Bunting. The plaintiff herein, Accountability Burns, brings this action pro se. The Court has therefore made every effort to determine the exact nature of plaintiff's allegations in order to determine whether a cause of action has been alleged.

Upon an examination of the Complaint, the initial problem facing the Court is to determine who the intended defendants are in this action. The caption on the Complaint filed December 22, 1975, designates the defendants as:

- "(1) Judge Barrow
- (2) US govt, HEW-FIPSE, Wash DC
- (3) Ma Bell, Tulsa Operator div"

Based upon the allegations contained in the Complaint, it appears to the Court that plaintiff is in actuality referring to the Honorable Judge Allen E. Barrow, Southwestern Bell Telephone Company, the United States of America, the Department of Health, Education and Welfare, and Charles Bunting.

The Court has read and attempted to interpret the statements contained in the Complaint, Addendum to the Complaint, and the

responsive briefs filed by the plaintiff. Based upon this examination the Court finds that plaintiff's entitling of the Complaint as "A message for MARS" is, in fact, apropos. The Complaint contains neither a short and plain statement of the grounds upon which the Court's jurisdiction depends, nor a short and plain statement of the claim showing that the pleader is entitled to relief as required by Rule 8, Federal Rules of Civil Procedure. In addition, plaintiff's Complaint fails to conform to the requirements of Rule 10 and Rule 11, Federal Rules of Civil Procedure. The form of the Complaint as filed not only creates the necessity for the Court to attempt to determine what if any jurisdictional basis plaintiff is alleging, and further, what, if any, cause of action plaintiff is alleging; but in addition the Complaint places an unjustifiable burden on the defendants to answer or in other fashion respond to the Complaint. It would certainly not be inappropriate for the Court to dismiss the Complaint as being violative of the Rules of Civil Procedure. Shakespeare v. Wilson, 40 F.R.D. 500 (S.D. Cal. 1966); Vance v. American Society of Composers Authors and Publishers, 271 F.2d 204 (8th Cir. 1959) cert. denied 361 U.S. 933 (1960); Agnew v. Moody, 330 F.2d 868 (9th Cir. 1964) cert. denied 379 U.S. 867 (1964). However, time and effort having been expended by the defendants in attempting to respond to the Complaint and by the Court in attempting to accurately interpret the Complaint, the allegations contained therein will be considered in order to finally adjudicate the case on its merits.

In regard to the Motion to Dismiss filed by the Honorable Judge Allen E. Barrow, the Complaint filed December 22, 1975, states plaintiff is "citing the local US District Judge (Barrow) for contempt, for refusing to permit this ~~formal~~ normal complaint to be filed." The Complaint was filed on December 22, 1975; and therefore this statement is baseless. In the material filed by plaintiff designated "Addendum to Complaint" the plaintiff

states simply: "Judge Barrow should relinquish venue to the Morris court in Muskogee, a former law school dean." These being the only references to Judge Allen E. Barrow in the Complaint and Addendum to the Complaint, no cause of action is stated as to this defendant. The Motion to Dismiss of this defendant is therefore sustained.

In regard to the Motion to Dismiss filed herein by Southwestern Bell Telephone Company, the Complaint alleges that the plaintiff attempted to place a collect long distance call to certain officials of the United States Government in Washington, D. C., on December 17, 1975, and that when the government officials refused to accept the collect call, the operator, "in collusion with a DC bureaucrat, refused to intervene." In addition to the fact that service of process was not properly effected on Southwestern Bell Telephone Company, and it was not properly named in the Complaint, clearly no cause of action has been alleged as to this defendant; and its Motion to Dismiss is therefore sustained.


In regard to the allegations made concerning the United States of America, the Department of Health, Education and Welfare and Charles Bunting, the allegations appear to concern a proposal submitted by the plaintiff seeking funds pursuant to a program sponsored by the Department of Health, Education and Welfare. A copy of the brochure attached to plaintiff's Complaint is entitled "Fund for the Improvement of Postsecondary Education" and contains program information and application procedures. It appears from the Complaint that plaintiff submitted a proposal in regard to this program in which plaintiff requested "14 megabucks" to combat "yellow-collar and white-collar crime." In the Complaint, plaintiff alleges that he did not receive a proper response to this proposal and that when he attempted to contact the Department of Health, Education and Welfare, they apparently refused to accept a collect call. (In plaintiff's

Response to the Motion to Dismiss, plaintiff states that he has now received acknowledgment of receipt of his proposal to HEW-FIPSE.) Plaintiff's inquiry was referred to Charles Bunting who returned the call to the plaintiff but apparently did not respond favorably to plaintiff's proposal and no "on-site examination" was approved. Thereafter plaintiff states in the Complaint:

"The charge is mail fraud (against the govt), an attempt to bilk time and money from bidders by the HEW-OE and DC and thus impeach the only assets a bidder has (constituting theft, larceny, ripoff, white-collar crime) . . . "

The factual statements made by plaintiff in the Complaint and Addendum to Complaint simply do not constitute a cause of action. The Complaint is therefore hereby dismissed as to all defendants.

It is so Ordered this 1st day of April, 1976.


H. DALE COOK
United States District Judge